

## SENATE BILL NO. 269

INTRODUCED BY WHEAT, CLARK, ELLINGSON, GOLIE, WISEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "GROUND WATER" FOR THE PURPOSES OF THE UPPER MISSOURI RIVER BASIN CLOSURE STATUTES, THE JEFFERSON RIVER AND MADISON RIVER BASIN CLOSURE STATUTES, AND THE TETON RIVER BASIN CLOSURE STATUTES; PROVIDING FOR THE PROCESSING OF GROUND WATER APPLICATIONS IN THE UPPER MISSOURI RIVER BASIN, JEFFERSON RIVER BASIN, MADISON RIVER BASIN, AND TETON RIVER BASIN; AMENDING SECTIONS 85-2-329, 85-2-330, 85-2-340, ~~AND 85-2-341~~, 85-2-342, AND 85-2-343, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. SECTION 1. GROUND WATER PERMIT APPLICATIONS IN THE UPPER MISSOURI, JEFFERSON, MADISON, AND TETON RIVER BASINS.** (1) IN ADDITION TO THE CRITERIA PROVIDED IN 85-2-311, THE DEPARTMENT MAY GRANT A PERMIT TO APPROPRIATE GROUND WATER, AS DEFINED IN 85-2-102, IN THE UPPER MISSOURI RIVER BASIN, JEFFERSON RIVER BASIN, MADISON RIVER BASIN, AND TETON RIVER BASIN ONLY IF THE APPLICANT PROVES BY A PREPONDERANCE OF EVIDENCE THAT:

(A) THE PROPOSED APPROPRIATION OF GROUND WATER:

(i) WILL NOT INDUCE SURFACE WATER INFILTRATION; AND

(ii) WILL NOT REDUCE GROUND WATER DISCHARGE TO SURFACE WATER WITHIN 1 YEAR; OR

(B) THE AUGMENTATION PLAN SUBMITTED BY THE APPLICANT PROVIDES SURFACE FLOW RATE AND VOLUME REPLACEMENT WATER, FOR THE SAME REACH AS THE DEPLETION, SUBSTANTIALLY CORRESPONDING TO THE TIMING, FLOW RATE, VOLUME, AND QUALITY OF REDUCTION IN SURFACE FLOWS RESULTING FROM OPERATION OF THE PROPOSED DIVERSION. IF NEEDED, AN APPLICATION FOR A BENEFICIAL WATER USE PERMIT OR FOR A CHANGE IN APPROPRIATION RIGHT MUST BE SUBMITTED WITH THE AUGMENTATION PLAN.

(2) AN APPLICANT WHO CONCLUDES THAT SUBSECTIONS (1)(A)(i) AND (1)(A)(ii) CANNOT BE MET MAY FILE AN AUGMENTATION PLAN WITH THE INITIAL APPLICATION AND PROCEED AS PROVIDED IN SUBSECTION (9).

(3) AN APPLICATION TO APPROPRIATE GROUND WATER UNDER THIS SECTION MUST BE PROCESSED AS PROVIDED IN THIS SECTION.

1 (4) (A) AN APPLICATION FOR GROUND WATER WITHOUT AN AUGMENTATION PLAN MUST CONTAIN A REPORT  
2 PREPARED BY A HYDROLOGIST OR PROFESSIONAL ENGINEER THAT CONCLUDES IN THE PROFESSIONAL OPINION OF THE  
3 PREPARER THAT THE PROPOSED APPROPRIATION OF GROUND WATER:

4 (I) WILL NOT INDUCE SURFACE WATER INFILTRATION; AND

5 (II) WILL NOT REDUCE GROUND WATER DISCHARGE TO SURFACE WATER WITHIN 1 YEAR.

6 (B) IF AN APPLICANT FAILS TO SUBMIT THE REPORT WITH THE APPLICATION, THE APPLICATION MAY NOT BE  
7 ACCEPTED.

8 (5) UPON RECEIPT OF A CORRECT AND COMPLETE GROUND WATER APPLICATION PURSUANT TO THE  
9 REQUIREMENTS OF 85-2-302, THE DEPARTMENT SHALL PROVIDE NOTICE OF THE RECEIPT OF THE APPLICATION PURSUANT  
10 TO 85-2-307(1) AND INCLUDE A STATEMENT THAT ANY PERSON WHO DESIRES FURTHER NOTICE OF THE DEPARTMENT'S  
11 ACTIONS IN PROCESSING THE GROUND WATER APPLICATION CONTAINING THE REPORT HAS 10 DAYS TO FILE A REQUEST  
12 WITH THE DEPARTMENT FOR FURTHER NOTIFICATION.

13 (6) (A) A DEPARTMENT HYDROLOGIST OR A HYDROLOGIST UNDER CONTRACT WITH THE DEPARTMENT SHALL  
14 REVIEW THE REPORT SUBMITTED WITH THE GROUND WATER APPLICATION IN SUBSECTION (4) AND IN A WRITTEN DECISION  
15 SHALL STATE IF THE REPORT HAS PROVEN THAT THE PROPOSED APPROPRIATION OF GROUND WATER:

16 (I) WILL NOT INDUCE SURFACE WATER INFILTRATION; AND

17 (II) WILL NOT REDUCE GROUND WATER DISCHARGE TO SURFACE WATER WITHIN 1 YEAR.

18 (B) THE HYDROLOGIST'S WRITTEN DECISION MUST BE MAILED TO ANY PERSON WHO REQUESTED FURTHER NOTICE  
19 OF THE DEPARTMENT'S ACTIONS PURSUANT TO SUBSECTION (5).

20 (C) THE APPLICANT OR ANY PERSON WITH STANDING PURSUANT TO 85-2-308(3) HAS 30 DAYS TO REQUEST A  
21 HEARING BEFORE A DEPARTMENT HEARING EXAMINER TO SHOW CAUSE BY A PREPONDERANCE OF THE EVIDENCE WHY  
22 THAT DETERMINATION WAS INCORRECT. AFTER THE DEADLINE IN THIS SUBSECTION (6)(C) HAS PASSED, ANY PERSON WITH  
23 STANDING PURSUANT TO 85-2-308 HAS 10 DAYS TO INTERVENE AS A PARTY, AS A MATTER OF RIGHT, IN THE SHOW CAUSE  
24 HEARING. THE APPLICANT, ANY OTHER PERSON WHO REQUESTED A HEARING, AND ANY TIMELY INTERVENORS ARE  
25 CONSIDERED PARTIES AND MAY PRESENT EVIDENCE TO THE DEPARTMENT AT THE SHOW CAUSE HEARING.

26 (7) THE PROVISIONS OF TITLE 2, CHAPTER 4, PART 6, APPLY TO THE HEARING BEFORE THE DEPARTMENT, AND  
27 THE PROVISIONS OF TITLE 2, CHAPTER 4, PART 7, APPLY TO JUDICIAL REVIEW OF THE DEPARTMENT'S DECISION.

28 (8) IF THE DEPARTMENT DETERMINES THAT THE REQUIREMENTS OF SUBSECTION (1)(A) ARE NOT MET, THE  
29 DEPARTMENT SHALL TERMINATE THE APPLICATION UNLESS THE APPLICANT SUBMITS AN AUGMENTATION PLAN AS PROVIDED  
30 IN SUBSECTION (1)(B) WITHIN 90 DAYS THAT PROVIDES SURFACE FLOW RATE AND VOLUME REPLACEMENT WATER, FOR

1 THE SAME REACH AS THE DEPLETION, SUBSTANTIALLY CORRESPONDING TO THE TIMING, FLOW RATE, VOLUME, AND  
2 QUALITY OF REDUCTION IN SURFACE FLOWS RESULTING FROM OPERATION OF THE PROPOSED DIVERSION.

3 (9) IF AN AUGMENTATION PLAN IS RECEIVED PURSUANT TO SUBSECTION (8) OR IS RECEIVED INITIALLY WITH THE  
4 GROUND WATER APPLICATION AND THE APPLICATION IS CORRECT AND COMPLETE, THE DEPARTMENT SHALL PROVIDE  
5 NOTICE OF THE APPLICATION AND AUGMENTATION PLAN FOLLOWING THE PROCEDURES IN 85-2-307. OBJECTIONS TO THE  
6 APPLICATION AND AUGMENTATION PLAN MUST BE FILED PURSUANT TO 85-2-308, AND THE PROVISIONS OF 85-2-309  
7 THROUGH 85-2-315 APPLY.

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9 **Section 2.** Section 85-2-329, MCA, is amended to read:

10 **"85-2-329. Definitions.** Unless the context requires otherwise, in 85-2-330 and this section, the  
11 following definitions apply:

12 (1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state  
13 water reservation pursuant to 85-2-316.

14 (2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake,  
15 reservoir, or other body of surface water ~~and that is not immediately or directly connected to surface water the~~  
16 ~~appropriation of which will not reduce basin surface water flows or volumes at any time~~ FOR WHICH A PERMIT IS  
17 NECESSARY AS PROVIDED IN [SECTION 1].

18 (3) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the  
19 source of supply and in which substantially all of the water returns without delay to the source of supply, causing  
20 little or no disruption in stream conditions.

21 (4) "Teton River basin" means the drainage area of the Teton River and its tributaries above the  
22 confluence of the Teton and Marias Rivers."

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24 **SECTION 3.** SECTION 85-2-330, MCA, IS AMENDED TO READ:

25 **"85-2-330. Basin closure -- exceptions.** (1) As provided in 85-2-319 and subject to the provisions of  
26 subsection (2) of this section, the department may not process or grant an application for a permit to appropriate  
27 water or for a reservation to reserve water within the Teton River basin.

28 (2) The provisions of subsection (1) do not apply to:

29 (a) an application for a permit to appropriate ground water as provided in [section 1];

30 (b) an application for a permit to appropriate water for a nonconsumptive use;

- 1 (c) an application for a permit to appropriate water for domestic, municipal, or stock use;  
2 (d) an application to store water during high spring flows; or  
3 (e) emergency temporary appropriations as provided for in 85-2-113(3)."  
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5 **Section 4.** Section 85-2-340, MCA, is amended to read:

6 **"85-2-340. Definitions.** Unless the context requires otherwise, in 85-2-341 and this section, the  
7 following definitions apply:

8 (1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state  
9 water reservation pursuant to 85-2-316.

10 (2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake,  
11 reservoir, or other body of surface water ~~and that is not immediately or directly connected to surface water the~~  
12 ~~appropriation of which will not reduce basin surface water flows or volumes at any time~~ FOR WHICH A PERMIT IS  
13 NECESSARY AS PROVIDED IN [SECTION 1].

14 (3) "Jefferson River basin" means the drainage area of the Jefferson River and its tributaries above the  
15 confluence of the Jefferson and Missouri Rivers.

16 (4) "Madison River basin" means the drainage area of the Madison River and its tributaries above the  
17 confluence of the Madison and Jefferson Rivers.

18 (5) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the  
19 source of supply and in which substantially all of the water returns without delay to the source of supply, causing  
20 little or no disruption in stream conditions."  
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22 **SECTION 5. SECTION 85-2-341, MCA, IS AMENDED TO READ:**

23 **"85-2-341. Basin closure -- exceptions.** (1) As provided in 85-2-319 and subject to the provisions of  
24 subsection (2) of this section, the department may not process or grant an application for a permit to appropriate  
25 water or for a state water reservation to reserve water within the Jefferson River basin or Madison River basin.

26 (2) The provisions of subsection (1) do not apply to:

- 27 (a) an application for a permit to appropriate ground water as provided in [section 1];  
28 (b) an application for a permit to appropriate water for a nonconsumptive use;  
29 (c) an application for a permit to appropriate water for domestic, municipal, or stock use;  
30 (d) an application to store water during high spring flows; or

(e) temporary emergency appropriations as provided for in 85-2-113(3)."

**Section 6.** Section 85-2-342, MCA, is amended to read:

**"85-2-342. Definitions.** Unless the context requires otherwise, in 85-2-343 and this section, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water ~~and that is not immediately or directly connected to surface water the appropriation of which will not reduce basin surface water flows or volumes at any time~~ FOR WHICH A PERMIT IS NECESSARY AS PROVIDED IN [SECTION 1].

(3) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(4) "Upper Missouri River basin" means the drainage area of the Missouri River and its tributaries above Morony dam."

**SECTION 7. SECTION 85-2-343, MCA, IS AMENDED TO READ:**

**"85-2-343. Basin closure -- exceptions.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the upper Missouri River basin until the final decrees have been issued in accordance with part 2 of this chapter for all of the subbasins of the upper Missouri River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water as provided in [section 1];

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows;

(e) an application for a permit to use water from the Muddy Creek drainage, which drains to the Sun River, if the proposed use of water will help control erosion in the Muddy Creek drainage; or

(f) temporary emergency appropriations as provided for in 85-2-113(3)."

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2 NEW SECTION. SECTION 8. CODIFICATION INSTRUCTION. [SECTION 1] IS INTENDED TO BE CODIFIED AS AN  
3 INTEGRAL PART OF TITLE 85, CHAPTER 2, PART 3, AND THE PROVISIONS OF TITLE 85, CHAPTER 2, PART 3, APPLY TO  
4 [SECTION 1].

6        **NEW SECTION. Section 9. Saving clause.** [This act] does not affect rights and duties that matured,  
7        penalties that were incurred, or proceedings that were begun before [the effective date of this act].

9 NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

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